

SENATE BILL NO. 345

INTRODUCED BY TUTVEDT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COUNTY ZONING PROCEDURES; REVISING HEARING NOTICE AND PUBLICATION REQUIREMENTS FOR A PROPOSED ZONING DISTRICT; INCREASING THE AMOUNT OF TIME ALLOWED FOR PROTESTING A PROPOSED ZONING DISTRICT; INCREASING TO 2 YEARS THE PROHIBITION ON PROPOSING A RESOLUTION FOR ZONING IN AN AREA WHERE ZONING HAS BEEN SUCCESSFULLY PROTESTED; ESTABLISHING PROCEDURES FOR INTERIM ZONING AND REQUIRING A PROTEST PERIOD FOR INTERIM ZONING; AMENDING SECTIONS 76-2-202, 76-2-205, AND 76-2-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507 and pursuant to the procedure required under 76-2-205, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced within 5 years after the date of the order by the board of county commissioners creating the district.

(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.

(5) All regulations must be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(7) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 2. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must:

~~(a) be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:~~

~~(a)(i) the boundaries of the proposed district;~~

~~(b)(ii) the general character of the proposed zoning regulations;~~

~~(c)(iii) the time and place of the public hearing;~~

~~(d)(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;~~

~~(b) be provided, in writing, by first-class mail once at least 60 days before the public hearing to all real property owners who will be directly affected by the establishment or revision of boundaries and adoption or amendment of regulations WITHIN THE PROPOSED DISTRICT;~~

~~(c) be posted not less than 45 days before the public hearing in at least five public places within the area that will be affected by the establishment or revision of boundaries and adoption or amendment of regulations PROPOSED DISTRICT; and~~

~~(d) be published once a week for 2 weeks in a newspaper of general circulation within the county.~~

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for ~~2~~ 8 ~~2~~ weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for ~~30~~ 60 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) ~~(a)~~ Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ real property owners within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of ~~1-year~~ 2 years.

~~(b) Property that is described as nonqualified agricultural land under 15-6-133(1)(c) may not be included as property taxed for agricultural purposes for the 50% calculation in subsection (6)(a)."~~

Section 3. Section 76-2-206, MCA, is amended to read:

"76-2-206. Interim zoning ~~map~~ district or regulation. (1) ~~The~~ Subject to subsection (3), the board of county commissioners may ~~adopt~~ establish an interim zoning ~~map~~ district or interim regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning ~~map district~~ or interim regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) ~~An A interim resolution for an interim zoning district or interim regulation~~ must be limited to ~~4-year~~ 6 MONTHS from the date it becomes effective. ~~The~~ SUBJECT TO THE PROVISIONS OF SUBSECTIONS (3)(C) AND (3)(D), ~~THE~~ board of county commissioners may extend the ~~interim~~ resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency or exigent circumstance compelling the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation;

~~(iv) a statement of how the interim zoning district or interim regulation is to classify, regulate, and mitigate the uses and related matters that constitute the emergency;~~

~~(v) a statement of alternative means of mitigation, including other regulatory mechanisms;~~

~~(vi)~~(iv) the time and place of the public hearing; and

~~(vii)~~(v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners shall:

~~(i) give the public an opportunity to be heard regarding the proposed establishment of an interim zoning~~

1 district or interim regulation; and

2 ~~—— (ii) review the proposals of the planning board if the planning board has been required to recommend~~
3 ~~boundaries and regulations under 76-2-204 and revise or amend the proposals at its discretion.~~

4 (c) (i) After the hearing, the board of county commissioners may adopt a resolution to establish an interim
5 zoning district or interim regulation. The resolution must contain the information required to be stated in the notice
6 under subsection (3)(a) and the establishment of the district or regulation may become effective immediately upon
7 adoption.

8 (ii) THE INTERIM ZONING DISTRICT OR INTERIM REGULATION REMAINS IN EFFECT FOR 6 MONTHS FROM THE DATE
9 OF ADOPTION OF THE RESOLUTION UNDER SUBSECTION (3)(C)(I). THE BOARD OF COUNTY COMMISSIONERS MAY ADOPT
10 A RESOLUTION TO EXTEND THE DURATION OF THE INTERIM ZONING DISTRICT OR INTERIM REGULATION FOR AN ADDITIONAL
11 1-YEAR PERIOD IF:

12 (A) NOT LESS THAN 60 DAYS BEFORE CONCLUSION OF THE 6-MONTH PERIOD, THE BOARD HOLDS A PUBLIC
13 HEARING FOR WHICH NOTICE IS PROVIDED AS REQUIRED IN SUBSECTION (3)(A);

14 (B) AT THE PUBLIC HEARING THE BOARD GIVES THE PUBLIC AN OPPORTUNITY TO BE HEARD REGARDING
15 EXTENDING THE DURATION OF THE INTERIM ZONING DISTRICT OR INTERIM REGULATION;

16 (C) FOR 30 DAYS AFTER THE PUBLIC HEARING, THE BOARD ACCEPTS WRITTEN PROTESTS TO EXTENDING THE
17 DURATION OF THE INTERIM ZONING DISTRICT OR INTERIM REGULATION AS PROVIDED IN SUBSECTION (3)(D); AND

18 (D) PROTEST IS NOT SUFFICIENT TO PREVENT EXTENDING THE DURATION OF THE INTERIM ZONING DISTRICT OR
19 INTERIM REGULATION.

20 (d) (i) For 30 days after adoption of the resolution to establish THE PUBLIC HEARING ON EXTENDING THE
21 DURATION OF an interim zoning district or interim regulation, the board of county commissioners shall accept
22 written protests to the creation EXTENDING THE DURATION of the interim zoning district or interim regulation from
23 persons who own real property within the boundaries of the district.

24 (ii) (A) If 40% of the real property owners within the boundaries of the district whose names appear on
25 the last-completed assessment roll or if real property owners representing 50% of the titled property ownership
26 whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under
27 Title 15, chapter 44, part 1, have protested the establishment EXTENDING THE DURATION of the interim zoning
28 district or interim regulation, then the resolution adopted under subsection (3)(c) is void BOARD MAY NOT ADOPT
29 A RESOLUTION TO EXTEND THE DURATION OF THE INTERIM ZONING DISTRICT OR INTERIM REGULATION AND MAY NOT
30 CONSIDER THE AREA FOR INCLUSION IN AN INTERIM ZONING DISTRICT OR TO BE SUBJECT TO AN INTERIM REGULATION FOR

1 A PERIOD OF 1 YEAR.

2 ~~(B) Property that is described as nonqualified agricultural land under 15-6-133(1)(c) may not be included~~
3 ~~as property taxed for agricultural purposes for the 50% calculation in subsection (3)(d)(ii)(A).~~

4 ~~—— (iii) An area included in a resolution to establish an interim zoning district or interim regulation and for~~
5 ~~which the criteria for protest provided in subsection (3)(d)(ii) have been met may not be included in an interim~~
6 ~~zoning district or interim regulation under this section for a period of 1 year."~~

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8 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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